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8 **IN THE UNITED STATES DISTRICT COURT**
9 **FOR THE EASTERN DISTRICT OF CALIFORNIA**
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11 RONALD EUGENE JAMES,

12 Plaintiff,

13 v.

14 SACRAMENTO COUNTY SHERIFF
15 DEPARTMENT, et al.,

16 Defendants.

No. 2:23-CV-0853-KJM-DMC-P

ORDER

17 Plaintiff, a prisoner proceeding pro se, brings this civil rights action. Pending
18 before the Court is Plaintiff's motion for the appointment of counsel, ECF No. 3.

19 The United States Supreme Court has ruled that district courts lack authority to
20 require counsel to represent indigent prisoners in § 1983 cases. See Mallard v. United States Dist.
21 Court, 490 U.S. 296, 298 (1989). In certain exceptional circumstances, the court may request the
22 voluntary assistance of counsel pursuant to 28 U.S.C. § 1915(e)(1). See Terrell v. Brewer, 935
23 F.2d 1015, 1017 (9th Cir. 1991); Wood v. Housewright, 900 F.2d 1332, 1335-36 (9th Cir. 1990).
24 A finding of "exceptional circumstances" requires an evaluation of both the likelihood of success
25 on the merits and the ability of the plaintiff to articulate his claims on his own in light of the
26 complexity of the legal issues involved. See Terrell, 935 F.2d at 1017. Neither factor is
27 dispositive and both must be viewed together before reaching a decision. See id. In Terrell, the
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1 Ninth Circuit concluded the district court did not abuse its discretion with respect to appointment
2 of counsel because:

3 . . . Terrell demonstrated sufficient writing ability and legal knowledge to
4 articulate his claim. The facts he alleged and the issues he raised were not
5 of substantial complexity. The compelling evidence against Terrell made it
6 extremely unlikely that he would succeed on the merits.

7 Id. at 1017.

8 In the present case, the Court does not at this time find the required exceptional
9 circumstances. According to Plaintiff, appointment of counsel is warranted because: (1) Plaintiff
10 is unable to afford counsel; (2) Plaintiff's incarceration will limit his ability to litigate; (3)
11 Plaintiff predicts the trial will involve conflicting testimony and believes counsel would help
12 Plaintiff to present evidence and perform examinations; and (4) Plaintiff has made repeated
13 efforts to obtain a lawyer. See ECF No. 3, pgs. 1-2. The Court finds these circumstances are not
14 exceptional but represent circumstances common to almost every prisoner bringing a lawsuit in
15 federal court.

16 While there is not enough information for the Court to determine the likelihood of
17 success at this early stage in the proceedings, the Court finds that Plaintiff's complaint
18 demonstrates his ability to articulate his own claims. See ECF No. 1. Furthermore, the Court
19 finds that Plaintiff's facts and legal issues are not so complex as to require counsel. See id.

20 Accordingly, IT IS HEREBY ORDERED that Plaintiff's request for the
21 appointment of counsel, ECF No. 3, is denied.

22 Dated: June 23, 2023



23 DENNIS M. COTA
24 UNITED STATES MAGISTRATE JUDGE
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